

(2014) 05 DEL CK 0275

In the Delhi High Court

Case No : WP(C) 2900/2014 and CM 6015/2014

Jai Kishan Khanna Since Deceased through L.R. Rajeev
Khanna

APPELLANT

Vs

Shantnu Appt. Coop Group Housing Society Registration No.
1111

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Delhi Co-operative Societies Act, 2003 — Section 112, 86, 86(2), 86(4)

Citation : (2014) 05 DEL CK 0275

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

**Advocate : Kamal Kapoor, Advocate for the Appellant; Saurabh Pandey,
Advocate for the Respondent**

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 11.03.2014 passed by the Delhi Cooperative Tribunal in Appeal No. 42/2014/DCT which had been preferred by the petitioner and which has been dismissed by the said Tribunal in limine on the ground that the appeal is not maintainable.

2. The petitioner claims to be a member of Shantnu Apartments CGHS Limited. A letter dated 19.08.2013 had been sent by the said society to the Registrar of Cooperative Societies on the subject of expulsion of the petitioner u/s 86 of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as "the said Act") and Rule 99 of the Delhi Cooperative Societies Rules, 2007 (hereinafter referred to as "the said Rules") on account of non-furnishing of residential proof prior to three years of applying for the membership of the society. By virtue of the said letter the Registrar of Cooperative Societies was requested to accord approval u/s 86 of the said Act and Rule 99 of the said Rules.

3. Section 86 of the said Act reads as under:-

86. Expulsion of a member.

(1) Notwithstanding anything contained in this Act and the rules framed thereunder, the committee of a co-operative housing society may, by a resolution, expel a member on any one or more of the following grounds, namely:-

- (a) if he has been a persistent defaulter in respect of any dues of the co-operative housing society; or
- (b) if he has willfully deceived the co-operative housing society by making any false statement or submitting any false document to obtain the membership of such co-operative society; or
- (c) if he has brought disrepute to the co-operative society or has done any other act detrimental to the interest and proper working of the co-operative society:

Provided that no such resolution shall be passed unless the member concerned has been given an opportunity of being heard after service of three registered notices confronting the member with the grounds for his proposed expulsion:

Provided further that no member shall be expelled unless a resolution to that effect is passed by not less than three-fourths of the members of the committee present and entitled to vote at the meeting and no resolution for expulsion shall be valid unless approved by the Registrar.

(2) After the resolution for expulsion is passed as above by the committee, the resolution shall be referred to the Registrar for approval within a period of thirty days.

(3) On the receipt of the resolution for expulsion, the Registrar shall take cognizance of such resolution within thirty days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of one hundred and eighty days and if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved:

Provided that the Registrar, before approving the resolution, shall hear the parties concerned in the manner prescribed and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and compel them to give evidence on oath, affirmation or affidavit and to compel production of documents by the same means and as far as possible in the same manner as provided in the case of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) and the order under this section so passed by the Registrar, shall be final with a right for appeal before the Tribunal.

(4) Any party aggrieved by the order of the Registrar or deemed approval of expulsion, as the case may be, under sub-section (3) may, within sixty days from the date of such order, appeal to the Tribunal.

(underlining added)

4. From the above provision, it is evident that the letter dated 19.08.2013 was pursuant to a resolution and, therefore, it is an action taken u/s 86(2), whereby after a resolution for expulsion is passed by the Committee, the resolution is required to be referred to the Registrar of Cooperative Societies for approval within a period of 30 days.

5. Sub-Section (3) of Section 86 stipulates that on the receipt of the resolution for expulsion, the Registrar shall take cognizance of the said resolution within 30 days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of 180 days. The said provision further stipulates that if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved. The period of 180 days from the issuance of the letter dated 19.08.2013 expired on 15.02.2014 and immediately thereafter, on 28.02.2014, the petitioner filed the appeal u/s 86(4) read with Section 112 of the said Act. Sub-Section (4) of Section 86 clearly entitles any party aggrieved by the order of the Registrar or "deemed approval" of expulsion, as the case may, to file an appeal within 60 days from the date of such order. The starting point of limitation of the deemed approval of expulsion would have to be reckoned from the date on which the period of 180 days expired. In the present case, the said period expired on 15.02.2014.

6. Unfortunately, for the petitioner, the Tribunal has rejected his appeal as being premature. We do not see as to how the appeal of the petitioner is premature inasmuch as the period of 180 days, on the facts narrated by the petitioner, expired on 15.02.2014. On that date, the deemed expulsion of the petitioner had fructified and, therefore, his right of appeal had been crystallized.

7. As a result, the conclusion of the Tribunal is erroneous. The impugned order is set aside. The appeal before the Tribunal is restored. The same may be listed before the Tribunal, in the first instance, on 02.06.2014. The writ petition is allowed as above. There shall be no order as to costs.